IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 733

J. HARVIE WILLIAMS, JULIUS PRUFER, EDWARD WEST, JR., CECIL C. HATFIELD, ROBERT A. PECK, BERNARD W. FREUND, GRACE T. SEAT, GRAYSON G. FENTRISS, WILLIAM GROSSMAN, and JOE E. SWIGER, all citizens of the United States resident in Virginia,

Appellants,

v.

VIRGINIA STATE BOARD OF ELECTIONS, L. STANLEY HARDAWAY, Secretary, MILLS E. GODWIN, JR., Governor of the Commonwealth of Virginia, and MARTHA BELL CONWAY, Secretary of the Commonwealth of Virginia,

Appellees

On Appeal From the United States District Court for the Eastern District of Virginia, at Alexandria

JURISDICTIONAL STATEMENT

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On Appeal From the United States District Court for the Eastern District of Virginia, at Alexandria

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JURISDICTIONAL STATEMENT

Appellants appeal from the Order on Opinion of a Three Judge Court entered on July 16, 1968, in the United States District Court for the Eastern District of Virginia, at Alexandria. The Order denied, after notice and hearing, the permanent injunction against

the appellees, prayed for in the appellant's Complaint, that would have enjoined, on constitutional grounds, the enforcement, operation or execution by the appellees of certain provisions of the State election statutes of Virginia: (a) that impose the general ticket system of electing, on a state-wide basis, *all* electors of the President and Vice President of the United States to be elected in Virginia; and (b) that prevent the election of the "representative" electors of the President and Vice President in single-member national (Congressional) districts solely by the people residing in the respective district voting as citizens of the United States, as Representatives in Congress are elected.

This appeal is brought by the following ten citizens of the United States who are residents one of each of Virginia's ten Congressional districts, as indicated by the district number following each name, and who, as plaintiffs in the court below, brought the legal proceeding as a class action in behalf of all citizens of Virginia similarly situated: J. Harvie Williams, *8th*, Julius Prufer, *6th*, Edward West, Jr., *3rd*, Cecil C. Hatfield, *9th*, Robert A. Peck, *10th*, Bernard W. Freund, *2nd*, Grace T. Seat, *5th*, Grayson G. Fentriss, *1st*, William Grossman, *4th*, and Joe E. Swiger, *7th*. Appellants seek a review on this appeal by this Honorable Court of all portions of the final Order on Opinion that dropped the Governor of Virginia as a party defendant, that denied the prayers of the Complaint for a declaratory judgment and for a permanent injunction against the appellees in their official character, as shown above, and dismissed the complaint, that ordered that the defendants recover of the plaintiffs the costs of the action, and that ordered that the action be stricken from the docket.

The appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The Opinion of the Three Judge Court in the United States District Court for the Eastern District of Virginia, at Alexandria, is reported in 288 Fed. Supp. 622 Copies of the Opinion, the Order on Opinion, and the Notice of Appeal are attached hereto as Appendix (Pages 1a-14a). For the Convenience of the Court, a copy of the Complaint as filed by the appellants is attached hereto as Appendix (pages 15a-33a).

JURISDICTION

1. This suit was brought by the appellants under Article III, Section 2 of the Constitution of the United States and under the provisions of 28 U.S.C.A. 1331 (federal question), 28 U.S.C.A. 1343, 42 U.S.C.A. 1983, 42 U.S.C.A. 1988 (deprivation of rights of citizens), 28 U.S.C.A. 2201, 28 U.S.C.A. 2202 (declaratory judgment), and 28 U.S.C.A. 2281 and 28 U.S.C.A. 2284 (three judge court for injunction against enforcement of a state statute on constitutional grounds), and the Constitution of the United States. Some of the particular sections of the Constitution under which the action was brought are: Article II, Section 1; the apportionment provisions of Article I, Section 2, and of the Fourteenth Amendment, Section 2; the provisions of the Privileges and Immunities Clause, of the Due Process Clause, and of the Equal Protection Clause of the Fourteenth Amendment, Section 1; and the provisions of the Twelfth Amendment, of the Constitution.

The action was brought to challenge the constitutional validity of certain provisions of the State election statutes of Virginia relating to the election of electors of the President and Vice President, namely: Section 24-7, Chapter 1 of Title 24 of the Code of Virginia providing that each voter may vote for one elector from each Congressional district of the state; and Sections 24-290.4 to 290.6, Chapter 11.1 of Title 24 of the Code of Virginia providing for a uniform official ballot throughout the state on which qualified voters can only designate their preference by marking a square preceding the name of a particular political party or group of their choice and for ballots so marked to be counted as if squares preceding the names of each of the individual electors of the respective group or party had been so marked.

The Complaint also questioned the constitutional validity of these statutes insofar as they deny to Plaintiffs the right and opportunity to select one elector in each of Virginia's ten Congressional districts exclusively by the votes cast in that respective district.

2. The Opinion and the Order on Opinion sought to be reviewed on this appeal were entered on July 16, 1968 by the Three Judge Court in the United States District Court for the Eastern District of Virginia at Alexandria. Appellants' Notice of Appeal, which seeks to review all portions of the Order on Opinion, was filed on September 12, 1968 in said United States District Court for the Eastern District of Virginia at Alexandria.

3. The jurisdiction of the Supreme Court to review the decision and Order on Opinion entered in this case by direct appeal is conferred by Title 28 United States Code, Sections 1253 and 2281.

4. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: Davis v. Mann 377 U.S. 678, 84 S.Ct. 1441 1964); Reynolds v. Sims, 377 U.S. 533. 84 S.Ct. 1362 (1964); Anderson v. Martin, 375 U.S. 399, 84 S.Ct. 454 (1964); Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526 (1964); Ray v. Blair, 343 U.S. 214, 72 S.Ct. 654 (1952); St. John v. Wisconsin Employment Relations Board, 340 U.S. 411, 71 S.Ct. 375 (1951).

5. The provisions of the State election statutes involved in this appeal are cited as: Section 24-7, Chapter 1 of Title 24 of the Code of Virginia, found at page 202 of Volume 5 (1964 replacement volume); Section 24-290.4, Chapter 11.1 of Title 24 of the Code of Virginia, found at page 283 of Volume 5 (1964 replacement volume); and Section 24-290.5, Chapter 11.1 of Title 24 of the Code of Virginia, found at page 283 of Volume 5 (1964 replacement volume). These sections respectively read as follows:

> **"Section 24-7 Electors for President and Vice President.**—There shall be chosen by the qualified voters of the Commonwealth, at the election to be held on the Tuesday after the first Monday in November, nineteen hundred and forty eight, and at elections to be held on the Tuesday after the first Monday in November in each fourth year thereafter, so many electors for President and Vice President of the United States as this State shall be entitled to at the time of such election under the Constitution and laws of the United States. Each voter may vote for one elector from each congressional district of the State, as the same shall be constituted and apportioned for the election of representatives in the Congress of the United States from this State at the time when

such election shall be held, and for two electors from the State at large; and, if at the time of choosing electors, the law shall provide for one or more representatives from the State at large in the Congress, each voter may at such election vote for such number of electors from the State at large (in addition to the two hereinbefore provided for) as shall correspond with the number of such representatives at large, so that the whole number of electors to be chosen at any election shall always be equal to the whole number of senators and representatives to which the State may at that time be entitled in the Congress.

"Section 24.290.4 How ballots to be prepared.— It shall thereupon be the duty of the State Board of Elections immediately to so notify the secretary of the electoral board of each county and city of the State, and to certify to each said secretary the form of official ballot which shall be uniform throughout the State. It shall become the duty of the electoral board of each of the several counties and cities within the State, at least forty days preceding such election, to cause to be printed on the uniform official ballot provided for in this section, and in Chapter 11 of this title, the name of each said political party and the party name specified by the persons naming electors by petition, and underneath or below the party name in parenthesis the words "Electors for ..... President and ..... Vice President" with the blanks filled in with the names of the candidates for President and Vice President for whom said candidates for electors are expected to vote in the Electoral College, after which the names of the electors nominated by said political parties or groups or petitioners shall follow; and to print a square preceding the name of each such party and party designation."

"Section 24-290.5 How ballots to be marked.— The qualified voters at said election shall designate

their preference for candidates for electors of President and Vice President by marking, as provided in § 24-245, the square preceding the name of the political party or party name of his choice, and the ballots so marked shall be counted as if squares preceding the names of the individual electors nominated or selected by such political parties or the group of petitioners had been so marked."

QUESTIONS PRESENTED

1. Is a State election statute, which establishes the state-wide general ticket system for electing those electors of the President and Vice President who are apportioned to the people as Representatives in Congress are, unconstitutional as violating the rights of citizens of the United States?

2. Does the Constitution of the United States require that the "representative" electors of the President and Vice President apportioned to the people be elected in single-member national districts, as their counterpart Representatives in Congress are elected?

3. Do the duties to be performed by the Governor of a State, in determining and certifying the names of the persons elected as presidential electors, make the Governor of Virginia a necessary or proper party defefendant in this action?

STATEMENT

On April 1, 1968, the 10 appellants herein filed a Complaint in the United States District Court for the Eastern District of Virginia, at Alexandria, as a class action against the Virginia State Board of Elections, its Secretary, the Governor of Virginia, and the Secretary of the Commonwealth of Virginia. A copy of the Complaint is attached hereto as Appendix, at

pages 15a-33a. The Complaint challenged the constitutionality of certain provisions of the Virginia State election statutes, Section 24-7, Chapter 1 of Title 24, and Sections 24-290.4 and 24-290.5 of Chapter 11.1 of Title 24, of the Code of Virginia, as set forth above, and prayed for a declaratory judgment and for a permanent injunction to enjoin the enforcement, operation or execution of certain portions of such provisions of Virginia's election statutes.

The 10 appellants, who brought this suit as plaintiffs, are citizens of the United States each resident in, and a duly qualified and registered voter in, a different one of the 10 national (Congressional) districts of Virginia. They brought the action as a class action on behalf of themselves and in behalf of all other citizens of the United States similarly situated who, like themselves, planned to participate in the election of the President and Vice President of the United States by voting in the election of presidential electors.

On April 8, 1968, the appellants filed a motion for designation of a Three Judge Court, together with points and authorities. On April 9, 1968, Judge Oren R. Lewis requested designation of a Three Judge Court. On April 15, 1968, Chief Judge Clement F. Haynsworth, Jr., of the United States Court of Appeals for the Fourth Circuit entered an Order designating a Three Judge Court to hear and determine the constitutional issues raised in said action. On April 24, 1968 the appellees filed a Motion to dismiss.

On April 29, 1968, a Pre-Trial Order was entered establishing a procedural schedule and setting the date for hearing on the merits and all motions on

June 25, 1968. On May 7, 1968, the appellees filed an Answer which simply denied the material allegations of the Complaint. On May 9, 1968, the appellants, as plaintiffs, filed a Motion for Summary Judgment.

On May 28, 1968, appellants filed plaintiffs' Brief before hearing on the merits, upon defendants' motion to dismiss and upon plaintiffs' motion for summary judgment. On June 5, 1968, appellants filed their list of witnesses and proposed exhibits. On June 11, 1968, appellees, as defendants, filed objections to certain of plaintiffs' proposed exhibits solely on grounds of alleged immateriality, but waived formal proof. On June 11, 1968, an Order was entered advancing the date of the hearing to June 24, 1968. On June 13, 1968, the appellees, as defendants, filed their Brief, and on June 20, 1968, a Brief for amicus curiae was filed. Also on June 20, 1968, appellants, as plaintiffs, filed their Reply Brief.

On June 24, 1968, trial proceedings were held as the case came on for hearing on the merits and on all motions, and arguments were heard, before the panel of three judges who took the case under advisement. On June 26, 1968, appellants, as plaintiffs, filed an affidavit together with two exhibits.

On July 16, 1968, the panel of three judges issued its Opinion, ruling that the state-wide general ticket system of election of all presidential electors from a state is but another form of the unit rule and that, notwithstanding its "disfranchisement" of voters and other "objectionable results", the Constitution permits it to be adopted by a state legislature.

The Court, in its Opinion, also stated that the "State unit system's cancellation of a State's minority votes

causes inequities and distortions of voting rights among citizens of the several states, isolating the effects of votes cast by persons of a particular political persuasion or party in one State, from those cast by voters of the same persuasion or party in other States." Nevertheless the Court ruled that "disparities of this sort", "this unevenness", and "the injustice" thereof "cannot be corrected by suit, especially one in which but a single State is impleaded." See Pages 11a-12a.

Stating that the merits and advantages of plaintiffs' thesis are readily recognizable, the Court's Opinion concludes that "the change to a district system would not . . . warrant Virginia or any other State to adopt an individual plan. Whatever the pattern, to succeed it must be nation-wide. As was aptly stated by Professor Robert G. Dixon, ' . . . any modification of the electoral college system should be on a uniform national basis in order to avoid creating additional inequities on an interstate basis'."

Notice of Appeal was filed by appellants on September 12, 1968. See page 13a-14a.

Among the material facts proved in the case are the following:

1. In the 1960 election, the popular vote in Virginia for the Republican nominee was only 52.4 per cent, and the Democratic nominee received 47 per cent of the vote cast, but the Republican nominee received 100 per cent of the 12 electoral votes from Virginia and the Democratic nominee received none.

2. If the "representative" electors had been elected by single-member districts in Virginia, in 1960 the Republican nominee would have received 9 electoral

votes from Virginia and the Democratic nominee would have received 3 electoral votes from Virginia.

3. In the 1964 election, the popular vote in Virginia for the Democratic nominee was 53.5 per cent and for the Republican nominee was 46.2 per cent, but the Democratic nominee received 100 per cent of the 12 electoral votes from Virginia and the Republican nominee received none.

4. If the "representative" electors had been elected by single-member districts in Virginia, in 1964 the Democratic nominee would have received 8 electoral votes from Virginia and the Republican nominee would have received 4 electoral votes from Virginia.

5. Of the 435 Congressional districts and corresponding "representative" electors in the nation, the number of national (Congressional) districts that were *won* in recent national elections of electors of the President and Vice President by one party's nominee, but were *lost* to the other party's nominee by the overriding state-wide elections, were as follows:

	Presidential Elections			
	1964	1960	1956	1952
By Democrats	9	43	64	82
By Republicans	29	103	17	15
Total Districts *won*, but *lost* by state-wide election	38	146	81	97

6. A citizen of New York participates in, and influences, the election of 43 presidential electors of which 41 are "representative" electors *apportioned* to the people in New York; while a citizen of Virginia participates in, and influences, the election of only 12 presidential electors of which 10 are "representative" electors *apportioned* to the people in Virginia.

THE QUESTIONS ARE SUBSTANTIAL

The decision of the Court below in this case is the first decision of any court in the land that rules, after hearing on the merits, that a State election statute, that imposes the state-wide general ticket system of electing *all* of the presidential electors to be elected in the State, is constitutional.

This is a substantial and serious ruling that the Constitution of the United States permits a State election law to deprive citizens of the United States of any right to have an effective vote in the national election of the President "in their capacity as citizens of the United States". As stated in the lower Court's Opinion, the state-wide general ticket system's "cancellation of States' minority votes cause *inequities* and *distortion* of voting rights among citizens of the several states, by *arbitrarily isolating* the effects of votes cast by persons of a particular political persuasion or party in one State, from those cast by voters of the same persuasion or party in other States."

The general ticket system allows the voters in the States to vote "only as citizens of the State," and denies them any voice on a national scale as citizens of the United States. Moreover, it defeats the fundamental constitutional principle of representation of people, not just voters, on the basis of national districts of essentially equal numbers of people, with each such district having one "representative" elector. This basic principle of representation of people as citizens of the United States by units of essentially equal numbers in national districts is established in the Constitution by the apportionment provisions of Article I and of the Fourteenth Amendment, Section 2. By the provisions

of Article II, Section I those apportionment provisions are made to apply as apportionments of "representative" electors in the same, and inseparable, way as the apportionments of Representatives in Congress thereunder.

At various points in their Opinion, the lower Court recognizes, or acknowledges in one form or another, that the state-wide general ticket system, or the unit rule to which it is equated by the Court:

1. "accords no representation among the electors to the minority of the voters."
2. "Admittedly, . . . does not produce a group as representative of the people as would an election of one elector by each district alone."
3. "If plaintiffs' contention for single-elector district voting had prevailed, it would have been possible for the Democratic and Republican parties to have had a proportionate representation among Virginia's electors in the same degree as they shared in the state-wide tally."
4. "Concededly, its (the general ticket system's or unit rule's) effect is exceptionable in many aspects."
5. Involves, among possible objectionable results:

   "disfranchisement of voters";

   "not only extinguishes the voice of State minorities, but it allows State majorities to speak for them";

   "exhaust(s) the power of millions of individual votes at the State level before the election is actually determined at the national level. They lose their effect on the outcome at a preliminary stage in the counting. These votes are disfranchised in the sense that their votes have no bearing on the

national electoral vote totals which determine the winner."

"deprivations";

"discrimination against the minority voters";

"inequality in the ballot's worth";

"cancellation of State's minority votes (that) causes inequities and distortions of voting rights among citizens of the several states";

"disparities";

"unevenness";

"injustice".

It is submitted that each of these conditions resulting under the State election law creating the general ticket system is of substantial significance in the life of the nation and its people under the Constitution and the form of government under it. The correction of these inequities is particularly vital to our people and our government in the current era when so many people in the various walks of life seem to have lost confidence in our government as being a "government for the people and by the people."

The greater degree of representation of the people as citizens of the United States in the election of the President and Vice President envisaged in the election of "representative" electors apportioned to the people by single-member national districts should not be denied them by State statute. The "unit rule", to which the lower Court equates the state-wide general ticket system, has been discredited in the view of the people by the action of the National Convention of the Democratic Party taken at Chicago this year, which discarded the unit rule as being not representative.

It is submitted that it is an abuse of discretion by the Court below to fail to grant equitable relief from the many glaring inequities suffered by the appellants and others similarly situated. The lower Court's Opinion recognizes that the provision of Article II, Section 1, of the Constitution that each State shall "appoint, in such manner as the Legislature thereof may direct," is "subject to possible constitutional limitation," and cites *Ray* v. *Blair,* 343 U.S. 214, 72 S. Ct. 654 (1952). The lower Court then states "In short, the manner of appointment must itself be free of Constitutional infirmity." Indeed, it is believed that the recent case in the Supreme Court in which it was ruled that the Ohio state laws that severely restricted the ability of potential candidates for President (George C. Wallace in that case) to have their names appear on the ballot in Ohio for the election of their designated electors place unconstitutional obstacles in the way of candidates, appears further to confirm that State election statutes enacted with respect to the election of electors of the President are subject to constitutional scrutiny by the Courts. (The official name and citation of the report of that case has not become known to appellants at the time of this writing).

The lower Court erroneously relies, for its inaction, upon the unnecessary dictum in the case of *Wesberry* v. *Sanders,* 376, U.S. 1, 7, 84 S. Ct. 526 (1964), that the rule, that as nearly as is practicable one man's vote in a congressional election is worth as much as another's, is followed automatically "when Representatives are chosen as a group on a state-wide basis." In the first place, this cannot be said of the election of electors of the President if one regards the "representative" electors at least as officers to be elected by the

citizens of the United States in a nation-wide election of the highest national officers of the country. As shown above, and as found by the lower Court, one United States citizen's vote in one state is not worth as much as another's in another State in presidential elections. In the second place the Court's statement about state-wide elections of Representatives as a group does not appear to have been necessary for the Court to reach the rule of the case. Moreover, in contradiction of that statement, see the majority opinion by Justice Frankfurter in *Colgrave* v. *Green,* 329 U.S. 549, 553, 66 S. Ct. 1198, 1200 (1964); and the comprehensive statement of Senator Benton of Missouri in 1824 in 41 Annals of Congress 169-170 and quoted in Lucius J. Wilmerding's article entitled "Reform of the Electoral System" in the March 1949 issue of the Political Science Quarterly. House Report No. 909, 27th Congress, 2nd Session, entitled "Apportionment Bill" and dated July 16, 1842 sets forth John Quincy Adams' view that the election by single-member districts is "the *only* mode by which the principle of representation, in proportion to *numbers* can be carried into execution".

The *Wesberry* case simply rules that Congressional districts must be essentially equal in numbers of people. It was decided under provisions of the Constitution that establish the structure of the Government, with consideration necessarily placed upon the significance of the apportionment provisions thereof.

It is respectfully submitted that the instant case can and should be decided on the basis of a fair and proper interpretation of similar provisions that establish the structure of the government, also with emphasis placed

upon the significance of the apportionment provisions thereof. These apportionment provisions have caused the number of "representative" electors to be elected in New York to decrease from 45 in 1948 to 41 in 1964 and in California to increase from 23 in 1948 to 38 in 1964. This establishes clearly that such "representative" electors belong to the people as citizens of the United States, not to the States as organized political entities, since they follow the requisite numbers of people to form a national district and to have a Representative in Congress and a "representative" elector.

The language of Article II, Section 1, does not, under a reasonable and careful interpretation of its terms and other provisions of the Constitution, give the "representative" electors to the States as organized political entities, and the state's legislature do not have unlimited power in effectuating the state's appointment of such electors of the President.

A. The Word "State" in Article II, Section I, Means Only the Geographic Area and the Inhabitants Thereof, Not the State as an Organized Political Entity.

Article II, Section 1, of the Constitution provides:

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; . . . ."

Under our Constitutional system of dual representation in Congress, the Senators represent the States as organized political entities, which are entitled to them; but the Representatives in Congress represent the people who are entitled to them under the apportionments according to the numbers of persons. See quotation in

Wesberry v. *Sanders,* 376 U.S. 1, 12-14, 83 S. Ct. 526, 532-533 (1964) from William Samuel Johnson, "in one branch the *people,* ought to be represented; in the *other,* the *States.*" The States, as organized political entities, accordingly are not "entitled to" the Representatives in Congress.

The statement "the whole Number of Senators and Representatives to which the State may be entitled in the Congress," therefore, requires that the word "State" therein can mean only the geographic area and the inhabitants thereof, and not the organized political entity. With this meaning, the clause is an accurate statement, because the geographic area and the inhabitants thereof are entitled to the Representatives directly and are also entitled to the Senators through their organized political entity.

Throughout the Constitution, the word "State" frequently means only the geographic area and the inhabitants thereof, and not the organized political entity. A few of the many examples of this are:

1. In the first sentence of Section 2, Article I: "People *of* the several States"; and "Electors *in* each State".

2. In the second sentence of Section 2, Article I: "Inhabitant of that State *in* which he shall be chosen".

3. In the third sentence of Section 2, Article I: "Representatives and direct taxes shall be apportioned *among* the several States which may be included within this Union, according to their numbers, . . ."

4. In the fifth sentence of Section 2, Article I: "When vacancies happen in the Representation *from* any State,"

5. In the first sentence of Section 4, Article I: "The Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed *in* each State by the Legislature thereof;".

Moreover, the state legislature is generally regarded as the supreme authority of the state, as an organized political entity. If the word "State" in "Each State shall appoint" were to mean the organized political entity, the words "in such Manner as the Legislature thereof may direct" would be wholly unnecessary. The phrase would, in that case, be redundant, since the organized political entity would have been granted the full power to appoint in any manner it should choose by the first four words standing alone.

It is submitted, therefore, that the drafters of the Constitution meant the word "State" in Aricle II, Section 1, to mean only the geographic area and the inhabitants thereof. Then the succeeding words "in such manner as the Legislature thereof may direct" serve a purpose. That purpose is not to establish a substantive right in apposition to the substantive right already created in the geographic area and the inhabitants thereof. That purpose is to provide a means of determining a procedure by which the respective geographic area and the inhabitants thereof shall appoint the electors to which they are entitled.

B. Procedural Authority in Legislature May Not Defeat Substantive Rights of Citizens to "Representative" Electors

The words "in such manner as the Legislature thereof may direct" by their very nature, relate only to procedure. In view of this fact and the foregoing construction of the words of Section 1, it follows that

the acts of the state legislatures under such procedural authority should be limited under the Constitution to the enactment of procedures that conform with, and do not defeat, the substantive rights of the people inherently created, and actually operative, in the full context of the provisions of Article II, Section 1.

Those substantive rights of the people are granted to the inhabitants of the respective geographic area by the proper meaning of "State" in the words "Each State shall appoint". Those substantive rights of the people are further confirmed and established by the actual operative effect of the provisions establishing the apportionment of "representative" electors (as distinguished from "senatorial" electors) according to the numbers of persons, which is inseparably bound to the apportionment to the people of Representatives in Congress.

CONCLUSION

There have been many attempts to amend the Constitution with regard to the election of the President over the last 150 years to overcome many of the inequities in it. Although the district method of election of electors, which was followed by a number of the states prior to 1836, has come closest to receiving the necessary two-thirds vote of both houses on several occasions, history convinces one that it seems almost impossible to obtain the necessary two-thirds vote of both houses on this subject in view of the factional strength in Congress of some of the political leaders from some of the larger states.

It is submitted that the questions raised in this proceeding are substantial and of greatest public im-

portance, as shown above. The need for equitable relief is great since the failure of the people as citizens of the United States to have fair and due representation in the election of their President and Vice President constitutes an irreparable injury to the people. It is believed that a fair and proper interpretation of the provisions of the Constitution establishing the structure of the national government, coupled with other significant provisions of the Constitution, support the position asserted by appellants and the power and authority of the Supreme Court to rule that the state-wide general ticket system of election of "representative" electors is unconstitutional. A finding of such unconstitutionality can be based, among other possible constitutional grounds, upon a constitutional requirement that "representative" electors of the President apportioned to the people be elected in single-member districts, as their counterpart Representatives in Congress are elected under the Apportionment Act of 1929, 2 U.S.C.A. 2a, as amended by Act of December 14, 1967, P.L. 90-196, 81 Stat. 581.

A ruling by the Supreme Court to the effect prayed by appellants in their Complaint and in this appeal, of course, can be made to apply effectively as to all states having more than one Representative. Indeed, it would appear that the lower Court's inability to make its order effective as to all such other states may have strongly influenced its decision.

It is submitted that the importance to the citizens of the United States of the questions presented is so substantial as to require plenary consideration, beyond the presentations possible or appropriate in this filing,

and to call for briefs on the merits and oral argument for their resolution.

Respectfully submitted,

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APPENDIX